



DECLARATION OF JAMES P. VIKEN
10/026,137

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

#23

Applicant: VIKEN, James P.) Attorney Docket: 23,318-40
Serial No.: 10/026,137) Art Group Unit: 3745
Filing Date: December 18, 2001) Examiner: Verdier, C. M.
Title: Complete Fluid Exchange System)
For Automatic Transmissions)

Commissioner for Patents
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DECLARATION OF JAMES P. VIKEN UNDER 37 C.F.R. § 1.131

I, James P. Viken, hereby declare as follows:

1. I am the inventor of the subject matter of claims pending in the above-referenced patent application.
2. I understand that the Patent and Trademark Examiner has found claims 3-5 and 51-55 of the referenced application to be anticipated by Chen 5,337,708.
3. I understand that the Patent and Trademark Examiner has found claims 2, 24, 26 and 31-32 to be unpatentable over Chen '708 in view of Becnel 2,513,941.
4. I understand that the Patent and Trademark Examiner has found claims 26 and 31-32 to be unpatentable over Japanese Patent 2-72,299 and Becnel '941 and Parker 5,370,160.
5. I understand that the Patent and Trademark Examiner has found claim 33 to be unpatentable over Japanese Patent 2-72,299 and Becnel '941 and Parker 5,370,160.

6. While I disagree with these assertions by the examiner, I am submitting this declaration to set forth evidence that I invented the subject matter of the claimed invention prior to the application date of Chen '708 (June 15, 1993) and Parker '160 (February 1, 1993).

7. Exhibits 1 – 4 were previously submitted on September 23, 2003 and September 29, 2003. Exhibit 1 is a photocopy of an original date stamped photograph of a fluid exchange machine having a selective bypass component. The photograph was taken more than one year prior to February 1, 1993.

8. Exhibit 2 is another photocopy of an original date stamped photograph of the fluid exchange machine having a selective bypass component. The photograph was taken more than one year prior to February 1, 1993. The reference numerals correspond to the detailed description of Exhibit 3.

9. Exhibit 3 is a detailed description of the various elements and methods of use of the fluid exchange machine of Exhibits 1 and 2.

10. The fluid exchange machine of Exhibits 1 and 2 having a selective bypass component was built and tested prior to February 1, 1993.

11. Exhibit 4 provides copies of various store receipts for parts and components of the fluid exchange machine of Exhibits 1 and 2, each receipt being dated prior to February 1, 1993.

12. Regarding claims 3-5, and 51-55, Exhibit 2 and Exhibit 3 (Figures 2 and 3) illustrate a fluid exchange system which was built and operated prior to February 1, 1993 and having: a first conduit (33) for communicating fluid from the transmission; a second conduit (37) for communicating fluid to the transmission; a bypass conduit (82) for selectively communicating fluid between

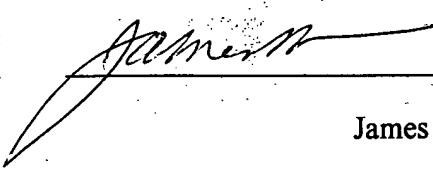
the pair of transmission cooling circuit ports. Fluid flow through bypass conduit (83) is selectively controlled by an operator by manipulating a bypass valve assembly (valves 49 and 19). Exhibit 3-Figure 3 illustrates an exchange mode of operation during which used fluid from the fluid circuit is received into the first conduit (33) and fresh fluid is supply to the vehicle via second conduit (37). Exhibit 3-Figure 2 illustrates the exchange mode of operation wherein used fluid is received from the vehicle into conduit (33) and is passed through the bypass conduit(82) to the second conduit (37) where it is reintroduced into the vehicle.

13. In view of the above, Exhibits 1-4 provide evidence that I invented the selective bypass aspect of the claimed invention at least as early as February 1, 1993.

14. I hereby declare that all statements made of my own knowledge are true and all statements made on information are believed to be true and further that the statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of this application or any patent issued thereon.

Date:

2-25-04


James P. Viken